

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 23-CR-755 DHU

NORBERT TSOSIE,

Defendant.

**SENTENCING MEMORANDUM AND
REQUEST FOR VARIANCE**

Norbert Tsosie, by and through his attorney, Dennis J. Candelaria, respectfully submits this sentencing memorandum. Mr. Tsosie requests that this Court find that a variance outside the sentencing guideline range is appropriate and to impose a sentence of 12 months and one day.

Mr. Tsosie is before the court because he made decisions that were selfish. He recognizes that the crime he committed was violent and that he committed this crime against a woman. He knows his victim did not deserve this and regrets his mistakes and apologizes to Jane Doe. He now accepts responsibility.

Mr. Tsosie's life is not defined by this crime. To understand why he committed this crime and why he is before this Court, it is important that this Court be introduced to this young man. He was born in Chinle, Arizona and raised on the Navajo reservation in the small village of Tsaile. Tsaile is located near the four corners in the northeast corner

of Arizona just across the Arizona/New Mexico border.

He was born to teenage parents and raised in a small two-bedroom, one-bath house on the Navajo reservation. When he was young, his parents separated. He lived with his mom, his sister, two grandmas and a great grandpa. Prior to his sister being born, he shared a bed with his mom. After his sister was born, the three of them shared one bedroom. His mom and sister shared a bed. He laid a mattress on the floor where he would sleep. His grandmas shared the other bedroom and his great grandpa slept on the couch in the living room.

Mr. Tsosie's childhood memories were mixed between work and play. The family lived far from any neighbor. He had daily chores. If her were not in school, he was expected to chop wood, pull weeds and clean house. House cleaning was a must as there were too many people living in such a small house. The house had all the necessities...electricity, running water, and heat. It was a cramped living space and could be a little suffocating. The family had to work hard to not get on each other's nerves.

One way to get away from this controlled chaos was to ride his bike. He didn't have any neighborhood friends, so he rode his bike along the maze of dirt roads. He didn't grow up in a gated community. There were no manicured lawns nor white picket fences. He didn't seem to mind as his playground was the red rocks and high pines that had been part of his family for generations.

When he was seven years old, he began to spend more time with his dad. His dad introduced him to horseback riding. This was a new sense of excitement and a freedom that he truly enjoyed. He was becoming more involved with his dad's side of the family.

He was introduced to aunts, uncles, and cousins. He describes his “new family” as a mixed blessing. On the one hand, he loved the freedom of horseback riding and meeting his half-siblings. On the other hand, he was getting older and with that came discipline. He was treated harshly. Punishment took the form of a belt, a clothesline, an extension cord or “anything that my dad could find to whip me. He would whip me so hard he left welts on my back.” As he shared this, his eyes welled, and voice becomes deliberate and slow...obviously bringing back raw emotions.

The hardship didn’t stop with the physical “punishment.” Mr. Tsosie just wanted to be a part of his new family. Unfortunately, he was treated like an outsider. His stepmom would call him stupid, lazy, and dumb. She verbally abused him in the Navajo language. For whatever reason, this seemed to sting more than if she had told him in English. He knew he was being treated differently. His halfsiblings were being raised the “native way.” They were being taught healing by the old school teachings and being cured by a medicine woman. He was raised as a Christian and attended church. This made him different and was teased by his dad’s side of the family. He was in the middle and being pulled in two different directions. Despite his treatment, he endured the teasing because he felt part of a family.

Mr. Tsosie was also part of a family in school. He made friends easily. From grade school through middle school, he navigated the halls and attended classes without any drama. His grades were good up to the seventh grade. From the 8th grade until the time that he dropped out in the 10th grade, things went downhill. There was peer pressure and Mr. Tsosie just wanted to fit in. He started hanging out with the wrong crowd. He started

using drugs and alcohol. He was expelled from high school for possession of marihuana. He was told that he had to go to the alternative school. However, the application and admittance into the school was so burdensome, that he gave up and never went back to school again. He became a dropout at 16.

As a high school dropout, his life became a hard lesson. It was difficult for him to find a good paying job. He was relegated to a temporary day laborer. He didn't have reliable transportation so he couldn't earn a steady income. He was bouncing from job to job. He was making pennies on the dollar. This uncertainty took a toll on his mental health. He wasn't mature enough to deal with realities of being an adult much less a father. He became a parent at 22. He had the responsibilities of raising his oldest daughter. He was paying for food and diapers and barely making enough to subsist. He describes his relationship with his baby's mama as stressful and toxic at times. He didn't seem to have the necessary tools to better cope with adversities of being a young parent. Some years later he had his second child and again he found it difficult to cope.

When given the opportunity to reflect about his life, Mr. Tsosie could only blame himself. He had little self-worth. He was not successful with school, with his jobs and didn't feel successful as a parent/dad. He wasn't given any reprieve from the cruelty of his world. He lost his grandma, grandpa, and cousins. He felt alone. His started drinking more and this had an adverse effect on his loved ones. He was scrambling to make sense of life. Meanwhile he was taking out his frustrations on the people that mean the most to him.

Jane Doe and Mr. Tsosie had been in a relationship for over a year. They were

living together. On that day, the two were travelling home from Farmington. They stopped at a local liquor where Mr. Tsosie bought alcohol. On the drive home, Mr. Tsosie drank heavily, and this led to an argument. He started hitting the car. Jane Doe stops at the fairgrounds in Dulce. Jane Doe's attempt to calm him down. Mr. Tsosie in a drunken rage strikes her and chokes her. She was taken to the hospital by her sister and given medical treatment. To this day she still suffers both physical and emotional trauma. She has tried to move on from this incident but still finds herself feeling damaged. Despite this, she has forgiven Mr. Tsosie. Mr. Tsosie cannot wrap his head around this forgiveness. He feels as though he is the least worthy person to be given grace. No one has ever blessed him with such kindness.

Mr. Tsosie requests that the court find that a sentence of twelve months and one day of incarceration is appropriate in this case given his personal history and characteristics, the nature of the charges, and the types of sentences available. Mr. Tsosie's history and characteristics, militates in favor of a variance. Primarily, it is worth pointing out that Mr. Tsosie, a 31-year-old man, has relatively little criminal history but all alcohol related. We now know why he has this history. Before his arrest in this case Mr. Tsosie has never spent more than 90 days in jail.

The absence of any prior custodial sentence is a significant factor in Mr. Tsosie's background. The absence of a prior custodial sentence increases substantially the deterrent effect of this sentence. As one court has stated, "a lesser period of imprisonment is required to deter a defendant not previously subject to lengthy incarceration." *United States v. Qualls*, 373 F. Supp. 2d 873, 877 (E.D. Wisc. 2005). Having never spent time in

custody prior to this case, less time is necessary to accomplish the purposes of sentencing. *See United States v. Cull*, 446 F. Supp. 2d 961 (E.D. Wis. 2006) (finding a variance appropriate where a defendant “had never been confined before, so this period was sufficient to impress upon him the seriousness of the offense and to deter others under similar circumstances”). Given the absence of any prior custodial sentence, a year in custody plus drug and alcohol treatment, anger management counseling and getting his GED will be sufficient to satisfy the goals of sentencing.

A sentence is sufficient, but not greater than necessary, if it a) reflects the seriousness of the offense, promotes respect for the law, and provides just punishment for the offense; b) affords adequate deterrence to criminal conduct; c) protects the public from further crimes of the defendant, and d) effectively provides the defendant with needed education or vocational training and medical care. One year incarceration plus three years of supervision satisfies all the statutory requirement under 3553 factors.

Wherefore, Mr. Tsosie respectfully requests that the Court find that a variance is justified in this case for a final sentence of no more than twelve months and one day.

Respectfully Submitted,

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Electronically filed April 9, 2024
/s/ Dennis J. Candelaria
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